

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| CHARLES R. GETZ, JR., | § |
| | § No. 413, 2011 |
| Defendant Below- | § |
| Appellant, | § |
| v. | § Court Below—Superior Court of |
| | § the State of Delaware, in and for |
| | § Kent County |
| STATE OF DELAWARE, | § Cr. ID No. 88K00683DI |
| | § |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: November 2, 2011

Decided: November 22, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 22nd day of November 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Charles R. Getz, Jr., filed an appeal from the Superior Court's July 13, 2011 order adopting the December 16, 2010 report of the Commissioner, which recommended that Getz's second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the

¹ Del. Code Ann. tit. 10, § 512(b); Super. Ct. Crim. R. 62.

face of the opening brief that the appeal is without merit.² We agree and affirm.

(2) The record before us reflects that, in August 1989, Getz was found guilty by a Superior Court jury of Rape in the First Degree in connection with the rape of his 11-year old daughter.³ He was sentenced to life in prison. This Court affirmed Getz's conviction on direct appeal.⁴ This Court also affirmed the Superior Court's denial of Getz's first postconviction motion.⁵

(3) The record before us also reflects that, while in prison, Getz refused to participate in a sex offender counseling group and lost certain privileges as a result. Getz filed lawsuits against prison officials in federal and state court challenging the loss of those privileges. All of his claims were unsuccessful. Approximately 20 years after his conviction, Getz filed his second motion for postconviction relief claiming that his lawsuits had generated new evidence of his mental illness.

(4) In its denial of Getz's second postconviction motion, the Superior Court, relying on the Commissioner's findings, determined that Getz had provided no evidence that he was mentally ill at the time of his crime. The

² Supr. Ct. R. 25(a).

³ This Court had remanded the matter to the Superior Court for a second trial. *Getz v. State*, 538 A.2d 726 (Del. 1988).

⁴ *Getz v. State*, Del. Supr., No. 364, 1989, Walsh, J. (Sept. 13, 1990).

⁵ *Getz v. State*, Del. Supr., No. 301, 1994, Veasey, C.J. (Oct. 31, 1994).

Superior Court concluded that Getz's claims were time-barred pursuant to Rule 61(i)(1) and that Getz's purported constitutional claims failed to overcome the time bar pursuant to Rule 61(i)(5)'s "miscarriage of justice" exception.

(5) In his appeal from the Superior Court's denial of his second postconviction motion, Getz asserts a number of claims that may fairly be summarized as follows: the Superior Court abused its discretion by a) failing to reach the merits of his claims; b) referring the matter to a Commissioner and adopting the Commissioner's recommendations; and c) applying the time bar when the State did not respond to Getz's postconviction claims. Getz also claims that his due process rights were violated.

(6) This Court has ruled that, prior to addressing the substantive merits of a defendant's motion for postconviction relief, the Superior Court must first determine whether the procedural requirements of Rule 61 have been met.⁶ As such, the Superior Court properly applied Rule 61(i)(1)'s time bar to Getz's claims. Moreover, in the absence of any evidence of a miscarriage of justice due to a violation of Getz's constitutional rights under Rule 61(i)(5), the Superior Court properly determined that the time bar could

⁶ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

not be overcome. We, therefore, conclude that Getz's first claim is without merit.

(7) Getz's second claim is that the Superior Court improperly referred this matter to a Commissioner and thereafter adopted the Commissioner's recommendations. Both Del. Code Ann. tit. 10, § 512 and Superior Court Criminal Rule 62 authorize the Commissioner to submit proposed findings of fact and recommendations for the disposition of postconviction motions. Moreover, the Superior Court, upon a *de novo* review of the Commissioner's report, may accept those findings and recommendations in their entirety. In the absence of any evidence of error or abuse of discretion on the part of the Superior Court, we conclude that this claim, too, is without merit.

(8) Finally, Getz claims, in essence, that he is entitled to a default judgment on his postconviction motion because the State failed to respond to his claims. Under Rule 61(f), the Superior Court must order the State to respond to a defendant's postconviction motion or "take such other action as the judge deems appropriate." The record reflects that the Superior Court did not order a response in this case, determining in its discretion that it could rule on the motion without the State's input. In the absence of any

error or abuse of discretion on the part of either the Superior Court or the State, we also conclude that Getz's third claim is without merit.

(9) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice